

*Dev's OR
comments.*

November 1, 1996

Patty:

Here are my comments on your draft response to ODF that you faxed to us for review on Wednesday afternoon. This is a tough letter to respond to, and I think you got a lot of it, but I think we will need to grapple with some additional tough issues here; I hope that you and the Region 10 folks find my thoughts below to be helpful.

I. 2 General Comments:

1. Our introduction should include some sincere compliments on their forestry program, along the following lines: We have found that it is in conformity with all of the forestry management measure and includes EP&Ms to ensure implementation. However, due to some fairly unique issues that arise in the West in general and in Oregon in particular (threatened and endangered species issues that have been linked at least in part to forestry activities; large-volume forestry activity, often in challenging topographical and hydrogeological settings,; and anything else you wish to add), even implementation of the basic MM will not address all forestry/WQ issues in OR's coastal program.
2. I think it would be helpful to number our responses to the numbered comments in their letter. I found it a little difficult to track. If you discuss more than one point together (e.g., discussion of point 3 in the context of point 1), be clear where in their letter they made the point to which you are responding. I would begin this numbering system in the middle of page 2 after you discuss the different time frames.

II. Intro part of our letter:

Page 1, para. 1, last sentence. I would put a period after "information". NOAA and EPA's job is to implement CZARA by setting forth accurate findings and conditions. You can say that NMFS, NOAA's "sister" agency, provided factual material that was relevant to these findings and conditions. But it was not an effort to assure that our "policy statements" are "not in conflict with each other."

III. Point-by-point responses (to the 7 points in the incoming).

1. I think it is critical that we set forth here as strong a case as we can about why we think OR waters currently experience significant impacts for forestry. The map idea is a good one. We should include Federal- and State-owned forest lands along with the private lands (it can be a separate map, if that makes it easier). But beyond this, we need to say that available information clearly indicates that forestry activities are currently contributing to water quality problems. This information includes the fact that WQ problems that are typically associated with forestry operation, such as sedimentation and elevated temperature, are indeed found to occur in many streams that are located in areas where forestry activities are the predominant land use or a leading land use (we need to dispose of their comment in paragraph 1 that we make thes

inferences just because “forest practices occur in the basin”). This association is enough to establish a relationship. Although a “cause and effect” relationship cannot always be established, the clear association, in the absence of compelling evidence to the contrary, implies a clear need to take protective steps.

I’m concerned that the bottom of page 2 of your draft sounds as if we relied entirely on what NMFS told us. I would, instead, recite in a paragraph or 2 what the “scientific information” is that we rely upon. Similarly, what is “information from the administrative record”? It would help if we could specify what we are referring to here.

I would delete the sentence following the NOTE (“If the Oregon . . .”), as well as the 2nd sentence of the next paragraph (“Data on the effectiveness”).

I would move the discussion of their new rules to our response to point # 3.

2. We need to respond to their first point re one year/two years. I personally have felt that we should give the state two years. Let’s either do that or provide a rational explanation here.

Rather than say at the top of page 3, “We would be interested to know the details of”, we should state that this process could indeed form part of the State’s implementation of the condition, but note that the State acknowledges that to date, the State has not utilized this process to implement additional MM despite the fact that the basic program has not proven sufficient to avert all WQ problems (per our discussion under point # 1 above).

3. This is difficult to respond to. Are we basically relying on modeling to conclude that the new rules will not suffice to address WQS violations?

I don’t understand what your first full paragraph on p. 3 is intended to respond to. I also would not refer back to our threshold review findings where we “asked questions on these issues” but rather articulate why we think they must develop additional MM to address stream protection, road management and forest chemical management. I also wonder whether we are getting too specific here re what the additional MM will need to address.

Finally, we need to respond to their point that we can’t expect to solve all old WQ problems through MMs. This is probably true. Maybe Region 10 can help by clearly illustrating that we’re not just dealing with the residue of logging operation from 30 years ago?

4. Can we cite or make available to the State what scientific literature and modeling was relied upon. Also, “review by EPA and NOAA forestry technical experts” is meaningless unless it is documented in writing. We need to provide written analysis or delete this phrase.

I recommend deleting “Has ODF proposed any monitoring of these voluntary programs?” In context, it implies that this is a requirement here. The more central point is made in the last paragraph, that deals more generally with monitoring.

We need to respond to their point that they have done monitoring and not found Temp. problems. The availability of data showing temperature problems associated with logging in recent years in at least some areas would be a good response.

5. Third full paragraph on p. 3, 3rd line should be re-written as “What are the maintenance measures for these roads and how does the State ensure their implementation?”

6. Fourth paragraph, 2nd line: Delete “What the MM require for chemical management requires ...” After all, we are not finding that they feel to meet the MM! Given this fact, I think we probably need to tone down our discussion of this issue in our findings document. Also, I think we should delete the sentence “Does ODF have data showing ...” In general, asking them to prove a negative is unfair. We have the burden of showing there is at least a significant probability of a problem. If we’ve done that, fine. If not, drop it. Remember, we’ve found that they meet the MM; we are only asking them to address remaining WQ problems that persist after MM implementation of the MM.

7. Bottom para., line 3: delete the sentence “To approve the 6217 monitoring program. . .” This is of course true, but just rubs it in by asserting our authority. Better would be to suggest that ODF work with DEQ to incorporate this information into the 6217 monitoring program and submit this to us.